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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Ryan Carlson, derivatively on behalf of
Opendoor Technologies, Inc.,

Plaintiff,

v.

John Rice, Eric Wu, Adam Bain, Cipora
Herman, Jonathan Jaffe, Pueo Keffer, Jason
Kilar, Glenn Solomon, and Carrie Wheeler,

Defendants,

and

Opendoor Technologies, Inc.,

Nominal Defendant.

Case No. _____

**VERIFIED STOCKHOLDER
DERIVATIVE COMPLAINT**

Plaintiff Ryan Carlson (“Plaintiff”), by and through his attorneys, brings this derivative complaint for the benefit of nominal defendant Opendoor Technologies, Inc. (“Opendoor” or the

1 “Company”) against its Board of Directors (the “Board”) and certain of its executive officers
2 seeking to remedy the Individual Defendants’ (defined below) breaches of fiduciary duties and
3 violations of federal law. Plaintiff alleges the following upon information and belief, except as to
4 those allegations concerning himself, which are alleged upon personal knowledge. Plaintiff’s
5 information and belief as to all other matters is based upon, among other things his counsel’s
6 investigation, which includes a review and analysis of: (i) filings in various proceedings, including
7 a class action lawsuit alleging violations of federal securities laws captioned Alich v. Opendoor
8 Technologies, Inc., Case No. 2:22-cv-01717 (D. Ariz.) (the “Securities Action”); (ii) Opendoor’s
9 filings with the U.S. Securities and Exchange Commission (the “SEC”); (iii) Opendoor’s press
10 releases, website, corporate governance documents, presentations, and conference calls; and (iv)
11 analyst reports and other publicly available information concerning Opendoor.
12

13 **NATURE OF THE ACTION**

14
15 1. This stockholder derivative action is brought on behalf of Opendoor against the
16 Individual Defendants from at least December 21, 2020 to September 16, 2022 (the “Relevant
17 Period”), for issuing, and/or causing the issuance of, materially false and misleading statements
18 and/or omitting material facts from statements that caused other statements to be materially false
19 and misleading, regarding the algorithm used by the Company to make offers to buy homes (the
20 “Algorithm”).
21

22 2. Opendoor operates a digital platform for buying and selling residential real estate.
23

24 3. The Company’s platform includes a feature known as “iBuying,” which uses an
25 algorithm to purportedly allow the Company to make accurate market-based offers to sellers and
26 then sell those homes to buyers for a profit.
27
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1 4. On December 21, 2020, the Company went public via a special purpose
2 acquisition company (“SPAC”), a process that includes merging with a public, development-
3 stage “blank check company” (the “Merger”). Following the Merger, Opendoor’s common stock
4 and warrants began publicly trading on the Nasdaq Stock Market (“NASDAQ”) under the
5 symbols “OPEN” and “OPENW,” respectively.
6

7 5. After the close of the Merger on December 21, 2020, Opendoor’s common stock
8 was trading at \$31.25 per share (the “Initial Closing Price”).

9 6. Throughout the Relevant Period, the Individual Defendants caused the Company
10 to utilize “iBuying” technology, claiming that it could accurately price homes by adjusting to
11 market conditions in “real-time.”
12

13 7. In reality, the Algorithm failed to accurately respond to changing market
14 conditions, and as a result, Opendoor faced substantial risk of incurring significant and repeated
15 losses due to housing market fluctuations.

16 8. The truth emerged on September 19, 2022, when *Bloomberg* reported that the
17 Company had lost money on 42% of its transactions in August 2022. That report further revealed
18 that losses were even more prevalent in key markets including Los Angeles, California and
19 Phoenix, Arizona, where the Company incurred losses on 55% and 76% of its transactions,
20 respectively. Further, the *Bloomberg* report included a prediction by real estate analyst Mike
21 DelPrete who opined that September would be even worse for Opendoor.
22

23 9. On this news, Opendoor’s stock price fell 12.32% to close at \$3.56 on September
24 20, 2022, a staggering 88.61% decline from the Initial Closing Price of \$31.25.
25

26 10. Plaintiff did not make a demand on the Board because, as further detailed herein,
27 demand would be a futile and useless act.
28

JURISDICTION AND VENUE

11. The claims asserted herein arise under §10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§78j(b), and SEC Rule 10b-5, 17 C.F.R. §§240.10b-5, promulgated thereunder. This Court has jurisdiction over the subject matter of this action under §27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §1331 because this is a civil action arising under the laws of the United States of America.

12. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367(a).

13. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

14. In connection with the acts, conduct and other wrongs complained of herein, the Individual Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, the United States mail, and the facilities of a national securities market.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District, the Individual Defendants have conducted business in this District, and the Individual Defendants’ actions have had an effect in this District.

THE PARTIES

Plaintiff

16. Plaintiff holds shares of Opendoor and has been a continuous holder of the Company's common shares at all relevant times.

Nominal Defendant

17. Nominal Defendant Opendoor is a Delaware corporation with its principal executive offices located in Tempe, Arizona. The Company's common stock and warrants trade on the NASDAQ under the ticker symbols "OPEN" and "OPENW," respectively.

The Individual Defendants

18. Defendant Eric Wu ("Wu") has served as the Chief Executive Officer ("CEO") of Opendoor and the Chairman of the Board at all relevant times. According to the Company's public filings, Wu received \$370,240,992 in 2020 and \$112,333,540 in 2021 in compensation from the Company.

19. Defendant John Rice ("Rice") has served as a member of the Board since March 2021 and serves as a member of the Board's Nominating and Corporate Governance Committee. According to the Company's public filings, Rice received \$627,711 in compensation from the Company in 2021.

20. Defendant Adam Bain ("Bain") has served as a member of the Board since December 2020 and serves as a member of the Board's Audit Committee and Compensation Committee. According to the Company's public filings, Bain received \$282,896 in compensation from the Company in 2021.

21. Defendant Cipora Herman ("Herman") has served as a member of the Board since December 2020 and serves as chair of the Board's Audit Committee. According to the

1 Company's public filings, Herman received \$636,877 in compensation from the Company in
2 2021.

3 22. Defendant Jonathan Jaffe ("Jaffe") has served as a member of the Board since
4 June 2018 and serves as a member of the Board's Nominating and Corporate Governance
5 Committee. According to the Company's public filings, Jaffe received \$263,726 in compensation
6 from the Company in 2021.
7

8 23. Defendant Pueo Keffer ("Keffer") has served as a member of the Board since
9 October 2015 and serves as a member of the Board's Audit Committee. According to the
10 Company's public filings, Keffer received \$274,421 in compensation from the Company in
11 2021.
12

13 24. Defendant Jason Kilar ("Kilar") has served as a member of the Board since March
14 2019 and serves as chair of the Board's Nominating and Corporate Governance Committee.
15 According to the Company's public filings, Kilar received \$274,421 in compensation from the
16 Company in 2021.
17

18 25. Defendant Glenn Solomon ("Solomon") has served as a member of the Board
19 since February 2015 and serves as chair of the Board's Compensation Committee. According to
20 the Company's public filings, Solomon received \$280,077 in compensation from the Company
21 in 2021.
22

23 26. Defendants Rice, Bain, Herman, Jaffe, Keffer, Kilar, Solomon, and Wu
24 comprised the Board at all relevant times and are herein referred to as the "Director Defendants."

25 27. Defendant Carrie Wheeler ("Wheeler") has served as the Chief Financial Officer
26 ("CFO") of Opendoor at all relevant times. According to the Company's public filings, Wheeler
27
28

1 received \$50,275,445 in 2020 and \$350,000 in 2021 in compensation from the Company. In
2 December 2022, Wheeler became the CEO of Opendoor and joined the Board.

3 28. The Director Defendants and Defendant Wheeler are collectively referred to
4 herein as the Individual Defendants.

5 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

6
7 29. By reason of their positions as officers, directors, and/or fiduciaries of Opendoor,
8 and because of their ability to control the business and corporate affairs of the Company, at all
9 relevant times, the Individual Defendants owed Opendoor and its shareholders the fiduciary
10 obligations of trust, good faith, loyalty, and candor, and were required to use their utmost ability
11 to control and manage the Company in an honest and equitable manner.
12

13 30. The Individual Defendants were required to act in furtherance of the best interests
14 of Opendoor and its shareholders so as to benefit all shareholders equally and not in furtherance
15 of their own personal interest or benefit.

16 31. Each director and officer of the Company owes to Opendoor and its shareholders
17 a fiduciary duty to exercise good faith and diligence in the administration of the affairs of the
18 Company and in the use and preservation of its property and assets, and the highest obligations
19 of fair dealing. To discharge their duties, the officers and directors of Opendoor were required to
20 exercise reasonable and prudent supervision over the management, policies, practices, and
21 controls of the Company. By virtue of such duties, the officers and directors of Opendoor were
22 required to, among other things:
23
24

- 25 (a) Exercise good faith to ensure that the affairs of the Company were
26 conducted in an efficient, business-like manner so as to make it possible to
27 provide the highest quality performance of their business;
28 (b) Exercise good faith to ensure that the Company was operated in a diligent,
honest, and prudent manner and complied with all applicable district and

1 state laws, rules, regulations and requirements, and all contractual
2 obligations, including acting only within the scope of its legal authority;

3 (c) Exercise good faith to ensure that the Company's communications with
4 the public and with shareholders are made with due candor in a timely and
5 complete fashion;

6 (d) Maintain and implement an adequate system of internal legal, financial,
7 and management controls to ensure that Opendoor's operations would
8 comply with all laws and that Opendoor's regulatory filings filed with the
9 SEC and disseminated to the public and the Company's shareholders
10 would be accurate; and

11 (d) When put on notice of problems with the Company's business practices and
12 operations, exercise good faith in taking appropriate action to correct the
13 misconduct and prevent its recurrence.

14 32. The Individual Defendants had a duty to monitor the Company's operations to
15 maximize profitability. The Individual Defendants, however, failed to adequately monitor the
16 performance of the Company's iBuying technology, and the flawed Algorithm upon which it is
17 based, causing the Company to incur losses on 42% of its real estate transaction in August 2022,
18 with losses on 55% and 76% of its transactions in key markets including Los Angeles, California
19 and Phoenix, Arizona, respectively.

20 33. The Individual Defendants had a duty to prevent the dissemination of erroneous,
21 misleading, and deceitful information concerning, inter alia, the Company's financial condition,
22 business operations, management, performance, growth, earnings, and business prospect so that
23 the Company's valuation and the common stock price would be based on accurate information,
24 and to preclude deceptive practices in the market.

25 34. The Individual Defendants, because of their positions of control and authority,
26 were able to and did, directly or indirectly, exercise control over the wrongful acts complained of
27 herein, as well as the contents of the various public statements issued by Opendoor.

28 35. Each of the Individual Defendants breached his or her fiduciary duties as alleged
herein, both individually and in concert with the other Defendants.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

36. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to incur losses through the use of flawed technology and conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

37. The purpose and effect of the conspiracy, common enterprise, and/or common course of conduct was, among other things, to facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty and unjust enrichment.

38. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company purposefully, recklessly, or negligently to conceal material facts, fail to correct such misrepresentations, and violate applicable laws.

39. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the actions set forth herein. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants, who are directors or officers of Opendoor, was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

40. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with actual or constructive knowledge of the primary wrongdoing, either took direct part in, or

1 substantially assisted the accomplishment of that wrongdoing, and was or should have been
2 aware of his or her overall contribution to and furtherance of the wrongdoing.

3 41. At all times relevant hereto, each of the Individual Defendants was the agent of
4 each of the other Individual Defendants and of Opendoor and at all times acted within the course
5 and scope of such agency.
6

7 **OPENDOOR’S CODE OF BUSINESS CONDUCT AND ETHICS**

8 42. Opendoor’s Code of Business Conduct and Ethics (the “Code of Conduct”),
9 adopted by the Board on December 18, 2020 and re-approved on December 7, 2021 and
10 December 8, 2022, includes the Company’s commitment to “upholding the highest standards of
11 business conduct and ethics.”
12

13 43. The Code of Conduct explicitly applies to “every employee, officer and director”
14 of Opendoor.

15 44. In a section titled “We Maintain Financial Integrity,” the Code of Conduct states,
16 in relevant part:
17

18 In particular, we rely upon our accounting and other business and corporate records
19 in preparing the periodic and current reports that we file with the Securities and
20 Exchange Commission (the “SEC”). Securities laws require that these reports
21 provide full, fair, accurate, timely and understandable disclosure and fairly present
22 our financial condition and results of operations. Team members who collect,
23 provide or analyze information for or otherwise contribute in any way in preparing
24 or verifying these reports should strive to ensure that our financial disclosure is
25 accurate and transparent and that our reports contain all of the information about
26 Opendoor that would be important to enable stockholders and potential investors to
27 assess the soundness and risks of our business and finances and the quality and
28 integrity of our accounting and disclosures. In addition:

- No team member may take or authorize any action that would intentionally cause our financial records or financial disclosure to fail to comply with generally accepted accounting principles, the rules and regulations of the SEC or other applicable laws, rules and regulations.

• All team members must cooperate fully with our Accounting Team, as well as our independent public accountants and counsel, respond to their questions with candor and provide them with complete and accurate information to help ensure that our books and records, as well as our reports filed with the SEC, are accurate and complete.

• No team member should knowingly make (or cause or encourage any other person to make) any false or misleading statement in any of our reports filed with the SEC or knowingly omit (or cause or encourage any other person to omit) any information necessary to make the disclosure in any of our reports accurate in all material respects.

45. In the section titled “We Conduct Business Fairly,” the Code of Conduct States, in relevant part, that Opendoor is “committed to doing business with fairness, integrity and honesty.”

46. In the section titled “We Safeguard And Protect Our Company Assets,” the Code of Conduct states, in relevant part, that “[a]ll team members are expected to protect [the Company’s] assets and ensure their efficient use.”

OPENDOOR’S AUDIT COMMITTEE CHARTER

47. Opendoor’s Audit Committee Charter, adopted by the Board September 30, 2021 and re-approved December 8, 2022, states that the purpose of the Audit Committee is, among other things, to “oversee the accounting and financial reporting processes of the Company.”

48. In the section titled, “Oversight of Financial Reporting Process and Internal Controls,” the Audit Committee Charter states that the Audit Committee will review:

- (i) the adequacy and effectiveness of the Company’s accounting and internal control policies and procedures on a regular basis, including the responsibilities, budget, compensation and staffing of the Company’s internal audit function, if any, through inquiry and discussions with the Company’s independent auditors, management and the Company’s corporate controller or chief accounting officer, if any; and
- (ii) if applicable, the yearly report prepared by management, and attested to by the Company’s independent auditors, assessing the effectiveness of the Company’s internal control over financial reporting and stating

management's responsibility for establishing and maintaining adequate internal control over financial reporting prior to its inclusion in the Company's Annual Report on Form 10-K.

49. In the same section, the Audit Committee Charter states that the Audit Committee will review with management:

- (i) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
- (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

50. The Audit Committee Charter further states that the Audit Committee will "[d]iscuss guidelines and policies governing the process by which senior management of the Company assess and manage the Company's exposure to risk, as well as the Company's major financial risk exposures and the steps management has taken to monitor and control such exposures."

51. With respect to Opendoor's Code of Conduct, the Audit Committee Charter states that the Audit Committee will "[r]eview the Company's program to monitor compliance with the Company's Code of Ethics and Business Conduct."

52. At all relevant times alleged herein, Defendant Herman has served as chair of the Audit Committee, and Defendants Bain and Keffer have served as members of the Committee.

SUBSTANTIVE ALLEGATIONS

53. Prior to the Relevant Period, Opendoor was known as Social Capital Hedosophia Holdings Corp. II ("SCH") and was operated as a SPAC, which is a development-stage corporation listed on a stock exchange with no particular business plan or purpose other than to

1 acquire an unidentified private company, thus making it public without going through the
2 traditional public offering process.

3 54. On September 15, 2020, the Company, then operating as SCH, entered into a
4 definitive agreement for a merger with Legacy Opendoor, a private company operating as a
5 digital platform for buying and selling residential real estate (“the Merger Agreement”). The
6 Merger Agreement valued Legacy Opendoor at \$4.8 billion.

7
8 55. On October 5, 2020, the Company filed a registration statement on Form S-4 with
9 the SEC in connection with the Merger (the “Registration Statement”). The Registration
10 Statement was signed by Defendant Wu. After multiple amendments, the Registration Statement
11 was declared effective by the SEC on November 27, 2020.

12
13 56. On November 30, 2020, the Company filed a proxy statement on Form 424(b)(3)
14 with the SEC in connection with the Merger (the “Proxy” and, together with the Registration
15 Statement, the “Offering Documents”). The Proxy was signed by Defendants Bain and Herman.

16
17 57. On December 18, 2020, the Company consummated the Merger, whereby SCH
18 deregistered as a Cayman Islands Exempted Company, domesticated as a Delaware corporation,
19 and changed its name to “Opendoor Technologies, Inc.”

20 58. On December 21, 2020, the Company’s common stock and warrants began
21 trading on the NASDAQ under the symbols, “OPEN” and “OPENW,” respectively.

22 59. Since the Merger, the Company has operated a digital platform for buying and
23 selling residential real estate. The Company’s platform includes a feature known as “iBuying,”
24 which uses an algorithm to purportedly allow the Company to make accurate market-based
25 offers to sellers and then sell those homes to buyers for a profit.
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1 the depth of the losses — and September is likely to be even worse than August,
2 DelPrete’s analysis shows.

3 “Opendoor’s metrics are in the danger zone,” DelPrete said in an interview. “They
4 are very close to where Zillow was in its worst moments.”

5 The iBuying model relies on acquiring homes, making light repairs and reselling
6 the properties — often within a few months of the initial purchase

7 [D]windling affordability and mortgage rates soaring toward 6% this spring
8 finally pushed would-be buyers to the sidelines.

9 By June, median home prices had begun to decline in some areas, especially the
10 Sun Belt markets that had been frothiest in the pandemic boom days. The shift
11 caught Opendoor by surprise, leaving it to offload thousands of properties it had
12 agreed to purchase when prices were rising.

13 * * *

14 The shares slid 4.7% to \$3.87 at 3:28 p.m. New York time Monday. They were
15 down 72% this year through the close on Sept. 16.

16 64. Following the Bloomberg report, the Company’s stock price fell 12.32% over the
17 following day to close at \$3.56 per share on September 20, 2022. This was a staggering 88.61%
18 decline from Opendoor’s stock price of \$31.25 per share immediately after the Merger on
19 December 21, 2020.

20 **False and Misleading Statements Contained in the Offering Documents**

21 65. The Offering Documents touted the Company’s “world-class data science
22 capabilities,” stating:

23 While the real estate industry lends itself to the use of a plethora of publicly
24 sourceable data, much of this data lacks the quality and specificity essential to
25 accurately price homes. Since Opendoor’s founding, we have built world- class
26 data science capabilities and systematized tooling to gather, aggregate and
27 synthesize an expanding catalogue of proprietary, hyperlocal data in order to
28 improve and automate pricing decisions.

66. With respect to the proprietary offline data used by the Algorithm, the Offering
Documents stated:

1 We have conducted over 150,000 home assessments during which we collect over
2 100 data points on each home and its surroundings. We have invested in building
3 custom inspection and operator tooling to systematically source and translate home
4 features into a robust data library. Once we have purchased a home, we can collect
5 additional proprietary home-level data through visitor feedback, visitor traffic and
6 duration of visits. These proprietary data points have led us to make over one billion
7 annotations and corrections to Multiple Listing Services (“MLS”) and tax assessor
8 data, as well as build out new, non-traditional geospatial data assets, such as power
9 line proximity and road noise level. The additional home level data we collect from
10 local vendors provides structured feedback on each home and further strengthens
11 our data moat.

12 67. The Offering Documents specifically touted the “pricing accuracy” of the
13 Algorithm and its purported ability to respond to changing market conditions:

14 Our unique data works in concert with our pricing algorithms. These algorithms
15 use machine learning to drive pricing decisions through demand forecasting,
16 outlier detection, risk pricing, and inventory management. Over time, we have
17 improved the pricing accuracy of our models as we add new data inputs and refine
18 model logic, improvements that compound with experience and scale. As we have
19 continued to demonstrate improving accuracy, we have also been able to increase
20 our number of fully automated home valuations.

21 Advancements in model sophistication have accelerated our feedback loops, such
22 that our systems can dynamically adjust to leading market indicators and react to
23 real-time macro- and micro-economic conditions. Our pricing algorithms are
24 designed to dynamically adjust to leading indicators and market conditions so that
25 the business can react to real-time economic conditions. This responsiveness is
26 critical to pricing accurately and maintaining margins, especially in periods of
27 volatility.

28 68. These statements were materially false and misleading and omitted material facts.
The Offering Documents overstated the benefits of the Company’s “iBuying” technology, stating
that the data used by the Algorithm had “the quality and specificity essential to accurately price
homes” and claiming that the Algorithm would enable the Company to “react to real-time
economic conditions.” In reality, the Algorithm could not accurately adjust to changing market
conditions and, as a result, the Company faced a substantial risk of incurring significant and

1 repeated losses. Indeed, Opendoor ended up losing money on 42% of its transactions in August
2 2022.

3 **False and Misleading Statements After the Merger**

4 69. On March 4, 2021, Opendoor filed an annual report on Form 10-K with the SEC
5 (the “2020 10-K”) which repeated the statements contained in the Offering Documents regarding
6 the Company’s proprietary Algorithm and its purported pricing accuracy and ability to react to
7 changing market conditions.
8

9 70. On February 24, 2022, Opendoor filed an annual report on Form 10-K with the
10 SEC (the “2021 10-K”), signed by Defendants Wu, Wheeler, Bain, Herman, Jaffe, Keffer, Kilar,
11 Rice, and Solomon. The 2021 10-K included substantively the same statements contained in the
12 Offering Documents regarding the Company’s proprietary Algorithm and its purported pricing
13 accuracy and ability to react to changing market conditions.
14

15 71. With respect to improvements made to the proprietary offline data used by
16 Opendoor’s Algorithm, the 2021 10-K stated, in relevant part:

17 We have conducted approximately 375,000 assessments during which we collect
18 over 100 data points on each home and its surroundings. We have invested in
19 building custom inspection and operator tooling to systematically source and
20 translate home features into a robust data library. These proprietary data points have
21 led us to make approximately 1.4 billion annotations and adjustments to MLS and
22 tax assessor data, as well as build out unique geospatial data assets, such as power
23 line proximity and road noise level. Once we list a home for resale, we collect
24 additional home-level demand data such as home visits and visitor feedback, which
25 enable us to continuously calibrate our resale strategy and acquisition home pricing.

26 72. In the 2021 10-K, Defendants touted the Company’s use of the Algorithm to
27 make offers that accurately reflect home values:

28 To create our home offers, we algorithmically produce both an estimated offer price
and an assessment of our confidence level in that estimate, and we then further
validate that estimate with in-depth underwriting and risk assessment, including
additional review from our in-house pricing associates, to finalize the offer. We

1 dynamically adjust our offers to account for the level of certainty in pricing each
2 home. This degree of certainty can be impacted by factors such as macro conditions,
3 the condition or attributes of a home, or depth of home comparables. We are
4 constantly recalibrating our view of pricing and where market values are trending
5 using high- frequency detailed metrics across all segments of our business,
6 including numerous inputs related to the dynamics of market demand and supply
7 across markets, home types and time periods.

8 73. With respect to risk management, the 2021 10-K stated:

9 Since our inception, we have prioritized investment in our pricing capabilities
10 across our home acquisition processes and our forecasting and resale systems, and
11 expect to continue to do so. These investments pair with a strong risk management
12 focus that is embedded in our pricing, finance and operations teams. We evaluate
13 the quality of our pricing models and processes using high-frequency detailed
14 metrics across all segments of our business, including home acquisition, resale
15 strategy and inventory health. All of our pricing decisions are managed centrally,
16 giving us a high degree of control over our overall growth and margin objectives.

17 74. Additionally, the 2021 10-K assured shareholders that “[w]hile residential real
18 estate markets are subject to fluctuations, as with any market, we believe we are well- positioned
19 to manage our risk exposure due to”, among other things, Opendoor’s “pricing models and
20 inventory management systems [that] are designed to recalibrate to market signals on a daily
21 basis.”

22 75. The 2021 10-K further touted the Algorithm’s pricing accuracy and ability to
23 adjust to market conditions in “real-time,” stating:

24 [C]hanging market conditions are reflected in our pricing for new acquisitions,
25 largely leaving previously-acquired inventory at risk to potential market volatility.
26 In addition, we employ sophisticated resale pricing management systems that allow
27 us to optimize sell-through and margin using real-time, local market demand
28 information, including down to an individual home level. We believe that the
quality and scale of information we utilize in our inventory management decisions
and our ability to manage these decisions across a scaled, diversified portfolio
provides us with a structural advantage over individual sellers or agents in the
traditional home selling process.

76. The statements contained in the 2021 10-K were materially false and misleading
and omitted material facts. The statement that “changing market conditions are reflected in our

1 pricing for new acquisitions” was materially false and highly misleading because the Algorithm
2 used by the Company to make offers failed to accurately adjust to changing market conditions.
3 Accordingly, Opendoor was not “well-positioned to manage [the Company’s] risk exposure.”

4 77. On August 4, 2022, Opendoor issued a press release (the “August 4, 2022 Press
5 Release”), announcing the Company’s second quarter 2022 results, including third quarter
6 adjusted earnings before interest, taxes, depreciation and amortization (“EBITDA”) guidance of
7 \$(175) million to \$(125) million.
8

9 78. Despite reporting that the Company could lose as much as \$175 million in
10 adjusted EBITDA in the third quarter of 2022, Defendant Wu continued to reassure shareholders
11 and the public, quoted in the August 4, 2022 Press Release as stating, “[C]urrent market
12 volatility is requiring us to move swiftly and with discipline in managing risk and overall
13 inventory health. We are leveraging our responsive pricing and operations platform . . . to
14 operate from a position of strength and solidify our leadership as the category winner.”
15

16 79. That same day, Defendants Wu and Wheeler issued a letter (the “August 4, 2022
17 Letter”) to shareholders, stating that, while “the Fed’s aggressive rate hikes . . . catalyzed a
18 slowdown in the rate of home transactions and lower levels of home price appreciation,”
19 Opendoor’s investments in its platform “have enabled an agile and low cost operating system
20 that allows [the Company] to scale up and down gracefully across seasons and cycles,” and the
21 Company is “ready and well-positioned with [Opendoor’s] responsive price strategies, flexible
22 operating model, low cost structure, and strong balance sheet to navigate near-term volatility and
23 invest in the future of [the Company].”
24
25

26 80. On a conference call with analysts on August 4, 2022 (the “August 4, 2022
27 Conference Call” and, together with the “August 4, 2022 Press Release” and the “August 4, 2022
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1 Letter,” the “August 4, 2022 Statements”), Defendant Wheeler stated that, despite the volatile
2 housing market, “our systems are doing exactly what they’re designed to do, which is responding
3 very, very quickly, adjusting prices to market and we’ve been raising spreads and new
4 acquisitions.”

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6 81. The August 4, 2022 Statements were false and misleading and omitted material
7 facts. In reality, the Algorithm used by the Company to make offers failed to accurately reflect
8 market prices. Indeed, over the course of the following month, Opendoor incurred losses on 42%
9 of its transactions due to the Algorithm’s inability to “respond[] very, very, quickly” to changing
10 market conditions.

11
12 82. Analysts and the market credited Defendants’ August 4, 2022 Statements. On
13 August 5, 2022, as a result of these false and misleading statements, Opendoor’s stock price
14 increased 21.7%.

15 **DAMAGE TO OPENDOOR**

16 83. As a direct and proximate result of the Individual Defendants’ misconduct, the
17 Company has incurred and will continue to incur significant financial losses, including but not
18 limited to, the losses incurred on a substantial amount of Opendoor’s transactions and the costs
19 of defending and potentially paying class wide liability in the Securities Action. These damages
20 also include the costs of remediating deficiencies in the Company’s Algorithm, deficiencies in
21 the Company’s internal controls, compensation and benefits paid to the Individual Defendants,
22 who breached their duties to Opendoor, and reputational harm and loss of goodwill.
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DERIVATIVE ALLEGATIONS

84. Plaintiff brings this action derivatively for the benefit of Opendoor to redress injuries suffered and to be suffered as a proximate result of the Individual Defendants' breaches of fiduciary duties and other violations of law.

85. Plaintiff will adequately and fairly represent the interests of Opendoor and its stockholders in enforcing and prosecuting its rights.

86. Plaintiff is an owner of Opendoor common stock and has been a continuous holder of the Company's common shares at all relevant times.

DEMAND FUTILITY ALLEGATIONS

87. At the time this action was commenced, the nine-member Board was comprised of Defendants Wu, Wheeler, Bain, Herman, Jaffe, Keffer, Kilar, Rice, and Solomon. Accordingly, Plaintiff is required to show that five Directors cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. As set forth below, all of the Board's current directors are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action because they face a substantial likelihood of liability, and so demand on the Board to institute this action is not necessary because such a demand would have been a futile act.

88. The Director Defendants, together and individually, violated and breached their fiduciary duties of candor, good faith, and loyalty. Specifically, the Director Defendants knowingly approved and/or permitted the wrongs alleged herein and participated in efforts to conceal those wrongs. The Director Defendants failed to adequately monitor the performance of the Company's iBuying technology and the Algorithm upon which it is based, which caused the Company to incur losses on 42% of its transactions in August 2022. The Director Defendants

1 also authorized and/or permitted the false statements to be disseminated directly to the public and
2 made available and distributed to shareholders, authorized and/or permitted the issuance of
3 various false and misleading statements, and are principal beneficiaries of the wrongdoing
4 alleged herein, and thus, could not fairly and fully prosecute such a suit even if they instituted it.

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6 89. The Director Defendants either knowingly or recklessly issued or caused the
7 Company to issue the materially false and misleading statements alleged herein. The Director
8 Defendants knew of the falsity of the misleading statements at the time they were made. As a
9 result of the foregoing, the Director Defendants breached their fiduciary duties, face a substantial
10 likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

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12 90. As members of the Board charged with overseeing the Company's affairs, each of
13 the Director Defendants had knowledge, or the fiduciary obligation to inform themselves, of
14 information pertaining to the Company's core operations and the material events giving rise to
15 these claims. Specifically, as Board members of Opendoor, the Director Defendants knew, or
16 should have known, the material facts surrounding the Algorithm used by the Company for its
17 "iBuying" technology.

18
19 91. Moreover, the Director Defendants willfully ignored, or recklessly failed to
20 inform themselves of, the obvious problems with the Company's internal controls, practices, and
21 procedures, and failed to make a good faith effort to correct the problems or prevent their
22 recurrence.

23
24 92. Defendants Bain, Herman, and Keffer are not disinterested or independent, and
25 therefore, are incapable of considering a demand because they serve as members of the Audit
26 Committee and, pursuant to the Audit Committee Charter, were specifically charged with the
27 responsibility to assist the Board in fulfilling its oversight responsibilities related to, inter alia,
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1 public disclosure requirements. Throughout the Relevant Period, however, these Defendants
2 breached their fiduciary duties to the Company by failing to prevent, correct, or inform the Board
3 of the issuance of material misstatements and omissions regarding the Algorithm used by the
4 Company to make offers to purchase homes and the adequacy of the Company's internal controls
5 as alleged above. Therefore, Defendants Bain, Herman, and Keffer cannot independently
6 consider any demand to sue themselves for breaching their fiduciary duties to the Company, as
7 that would expose them to substantial liability and threaten their livelihood.
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9 93. Further, each of the directors received payments, benefits, stock options, and
10 other emoluments by virtue of their membership on the Board and their control of the Company.
11 Indeed, all of the Director Defendants benefitted directly from the wrongdoing alleged herein.
12 Specifically, the Director Defendants benefitted from the artificial inflation of the price of the
13 Company's stock and the resulting increase in the value of Opendoor stock and stock options
14 they held.
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16 94. The Director Defendants, as members of the Board, were and are subject to the
17 Company's Code of Conduct. The Code of Conduct goes well beyond the basic fiduciary duties
18 required by applicable laws, rules, and regulations, requiring the Director Defendants to also
19 adhere to Opendoor's standards of business conduct. The Director Defendants violated the Code
20 of Conduct because they knowingly or recklessly engaged in and participated in making and/or
21 causing the Company to make the materially false and misleading statements alleged herein.
22 Because the Director Defendants violated the Code of Conduct, they face a substantial likelihood
23 of liability for breaching their fiduciary duties, and therefore demand upon them is futile.
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25 95. Furthermore, demand in this case is excused because the Director Defendants
26 derive substantial revenue from the Company, control the Company, and are indebted to each
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1 other. These conflicts of interest precluded the Director Defendants from adequately monitoring
2 the Company's operations and internal controls and calling into question the Individual
3 Defendants' conduct. Thus, any demand on the Director Defendants would be futile.

4 96. Significantly, none of the Director Defendants have taken remedial action to
5 redress the conduct alleged herein.
6

7 97. The Director Defendants' conduct described herein and summarized above could
8 not have been the product of legitimate business judgment as it was based on bad faith and
9 intentional, reckless, or disloyal misconduct. Thus, none of the directors can claim exculpation
10 from their violations of duty pursuant to the Company's charter. As a majority of the directors
11 face a substantial likelihood of liability, they are self-interested in the transactions challenged
12 herein. They cannot be presumed to be capable of exercising independent and disinterested
13 judgment about whether to pursue this action on behalf of the shareholders of the Company.
14 Accordingly, demand is excused as being futile.
15

16 98. The acts complained of herein constitute violations of fiduciary duties owed by
17 Opendoor's officers and directors, and these acts are incapable of ratification.
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19 99. The Director Defendants may also be unprotected against personal liability for
20 their acts of mismanagement and breaches of fiduciary duty alleged herein by directors' and
21 officers' liability insurance if they caused the Company to purchase it for their protection with
22 corporate funds i.e., monies belonging to the stockholders of Opendoor. If there is a directors'
23 and officers' liability insurance policy covering the Director Defendants, it may contain
24 provisions that eliminate coverage for any action brought directly by the Company against the
25 Director Defendants, known as, inter alia, the "insured-versus-insured exclusion." As a result, if
26 the Director Defendants were to sue themselves or certain officers of Opendoor, there would be
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1 no directors' and officers' insurance protection. Accordingly, the Director Defendants cannot be
2 expected to bring such a suit. On the other hand, if the suit is brought derivatively, as this action
3 is brought, such insurance coverage, if such an insurance policy exists, will provide a basis for
4 the Company to effectuate a recovery. Thus, demand on the Director Defendants is futile and,
5 therefore, excused.
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7 100. If there is no directors' and officers' liability insurance, then the directors will not
8 cause Opendoor to sue the Defendants named herein, since, if they did, they would face a large
9 uninsured individual liability. Accordingly, demand is futile in that event as well.

10 101. Thus, for all of the reasons set forth above, all of the directors are unable to
11 consider a demand with disinterestedness and independence. Consequently, a demand upon the
12 Board is excused as futile.
13

14 **COUNT I**

15 **Against the Individual Defendants for Violations of § 10(b)** 16 **of the Exchange Act, 15 U.S.C. § 78(j), and Rule 10b-5, 17 C.F.R. § 240.10b-5**

17 102. Plaintiff incorporates by reference and realleges each and every allegation set
18 forth above, as though fully set forth herein.

19 103. The Individual Defendants violated Section 10(b) of the Exchange Act, 15 U.S.C.
20 § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

21 104. The Individual Defendants, individually and in concert, directly or indirectly,
22 disseminated or approved the materially false statements specified above, which they knew or
23 deliberately disregarded were misleading in that they contained misrepresentations and failed to
24 disclose material facts necessary in order to make the statements made, in light of the
25 circumstances under which they were made, not misleading.
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1 105. The Individual Defendants violated Section 10(b) of the Exchange Act and Rule
2 10b-5 in that they: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue
3 statements of material facts or omitted to state material facts necessary in order to make the
4 statements made, in light of the circumstances under which they were made, not misleading; or
5 (iii) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon
6 Plaintiff and others similarly situated.
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8 106. The Individual Defendants acted with scienter because they: (i) knew that the
9 public documents and statements issued or disseminated in the name of Opendoor were
10 materially false and misleading; (ii) knew that such statements or documents would be issued or
11 disseminated to the investing public; and (iii) knowingly and substantially participated, or
12 acquiesced in the issuance or dissemination of such statements or documents as primary
13 violations of the securities laws.
14

15 107. The Individual Defendants, by virtue of their receipt of information reflecting the
16 true facts of Opendoor, their control over, and/or receipt and/or modification of the Company's
17 allegedly materially misleading statements, and/or their associations with the Company which
18 made them privy to confidential proprietary information concerning Opendoor, participated in
19 the fraudulent scheme alleged herein.
20

21 108. As a result of the foregoing, the market price of Opendoor's common stock was
22 artificially inflated during the Relevant Period. In ignorance of the falsity of the statements,
23 stockholders relied on the statements described above and/or the integrity of the market price of
24 the Company's common stock in purchasing Opendoor common stock at prices that were
25 artificially inflated as a result of these false and misleading statements and were damaged
26 thereby.
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1 109. In addition, as a result of the wrongful conduct alleged herein, the Company has
 2 suffered significant damages, including the costs and expenses incurred in defending itself in the
 3 Securities Action and reputational harm. The Individual Defendants, through their violation of
 4 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, have exposed the
 5 Company to millions of dollars in potential class-wide damages in the Securities Class Action.
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7 COUNT II

8 **Breach of Fiduciary Duty** 9 **Against the Individual Defendants**

10 110. Plaintiff incorporates by reference and realleges each and every allegation set
 11 forth above as though fully set forth herein.

12 111. The Individual Defendants owe the Company fiduciary obligations. By reason of
 13 their fiduciary relationships, the Individual Defendants owed and owe the Company the highest
 14 obligations of good faith, candor, loyalty, and due care.

15 112. The Individual Defendants failed to adequately monitor the performance of the
 16 Company's iBuying technology, and the Algorithm upon which it is based, causing Opendoor to
 17 incur losses on a substantial number of the transactions in which it engaged in August 2022. The
 18 Individual Defendants thereby willfully ignored the obvious deficiencies in the Company's
 19 internal controls, practices, and procedures and failed to make a good faith effort to correct the
 20 problems or prevent their recurrence.
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22 113. The Individual Defendants, together and individually, violated and breached their
 23 fiduciary duties of good faith, candor, loyalty, and due care. Specifically, the Individual
 24 Defendants breached their fiduciary duties by willfully or recklessly: (i) making and/or
 25 authorizing false and misleading statements and material omissions regarding the Algorithm
 26 used by the Company to make offers to buy homes; (ii) failing to correct and/or causing the
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1 Company to fail to correct these false and misleading statements and omissions; and (iii) failing
2 to establish and/or oversee reasonable information, oversight and reporting systems, and internal
3 controls.

4 114. The Individual Defendants made and/or authorized false and misleading
5 statements concerning the Algorithm used by the Company to make offers to buy homes, and the
6 adequacy of the Company's financial reporting and internal controls, because, inter alia, they
7 failed to disclose that the Algorithm used by the Company was unable to accurately respond to
8 changing market conditions, and as a result, the Company was exposed to substantial risk of
9 incurring significant and repeated losses due to housing market fluctuations.

10 115. The Individual Defendants further breached their fiduciary duties by failing to
11 ensure that reasonable information and reporting systems existed with respect to the Algorithm
12 and the adequacy of the Company's public reporting.

13 116. The Board either failed to institute an oversight system concerning the
14 performance of the Company's Algorithm and these critical public reporting systems or
15 consciously disregarded a series of related red flags. Despite being made aware of these red flags
16 warning that the Company's Algorithm did not perform as publicly represented, and that the
17 statements issued, or caused to be issued, by the Individual Defendants were materially false and
18 misleading, the Board failed to act.

19 117. The Individual Defendants also breached their fiduciary duties by failing to take
20 remedial action against the other Defendants and by concealing the other Individual Defendants'
21 fraudulent statements and material omissions.

22 118. As a direct and proximate result of the Individual Defendants' breaches of their
23 fiduciary obligations, Opendoor has sustained significant damages as alleged herein, including
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1 the costs of defending itself, and the exposure to massive class-wide liability, in the Securities
2 Action. As a result, the Individual Defendants are liable to the Company.

3 119. Plaintiff, on behalf of Opendoor, has no adequate remedy at law.

4 **COUNT III**

5 **Unjust Enrichment**
6 **Against the Individual Defendants**

7 120. Plaintiff incorporates by reference and realleges each and every allegation set
8 forth above as though fully set forth herein.

9 121. By their wrongful acts and omissions, the Individual Defendants were unjustly
10 enriched at the expense of and to the detriment of Opendoor.

11 122. The Individual Defendants were unjustly enriched because of the compensation
12 they received while breaching their fiduciary duties owed to Opendoor.

13 123. Plaintiff, as a stockholder and representative of the Company, seeks restitution
14 from the Individual Defendants, and seeks an order of this Court disgorging all profits, benefits,
15 and other compensation obtained by the Individual Defendants as a result of their wrongful
16 conduct and fiduciary breaches.

17 124. As a direct and proximate result of the Individual Defendants' misconduct, the
18 Company has suffered significant damages, as alleged herein.

19 125. Plaintiff, on behalf of Opendoor, has no adequate remedy at law.
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COUNT IV

**Aiding and Abetting Breaches of Fiduciary Duty
Against the Individual Defendants**

126. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

127. By encouraging and accomplishing the illegal and improper transactions alleged herein and concealing them from the public, the Individual Defendants have each encouraged, facilitated, and advanced their breaches of their fiduciary duties. In so doing, the Individual Defendants have each aided and abetted, conspired, and schemed with one another to breach their fiduciary duties, waste the Company's corporate assets, and engage in the ultra vires and illegal conduct complained of herein.

128. Plaintiff, on behalf of Opendoor, has no adequate remedy at law.

COUNT V

**Waste of Corporate Assets
Against the Individual Defendants**

129. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

130. The Individual Defendants breached their fiduciary duties by failing to properly supervise and monitor the adequacy of Opendoor's internal controls, by issuing, causing the issuance of, and/or failing to correct the false and misleading statements identified herein, and by allowing the Company to engage in an illegal, unethical, and improper course of conduct, which was continuous, connected, and ongoing at all relevant times.

131. The Individual Defendants wasted corporate assets by, among other things, incurring repeated losses on a substantial amount of the Company's real estate transactions and paying defense costs in connection with the Securities Action.

1 E. Awarding to Plaintiff the costs and disbursements of the action, including
2 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

3 F. Granting such other and further relief as the Court deems just and proper.

4 RESPECTFULLY SUBMITTED this 1st day of March, 2023.

5
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Certificate of Service

I hereby certify that on the 1st
day of March, 2023, I electronically
transmitted the foregoing to the Clerk
of the U.S. District Court using the
CM/ECF System for filing and transmittal.

s/Mary Farley